

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

LESTER JON RUSTON,)	
)	
Petitioner,)	
)	
vs.)	No. 07-3002-CV-S-FJG-H
)	
JOSEPH E. GUNJA, Warden,)	
United States Medical Center for)	
Federal Prisoners,)	
)	
Respondent.)	

**REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

Petitioner, an inmate confined at the United States Medical Center for Federal Prisoners, has petitioned this Court for a writ of habeas corpus. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner is entitled to no relief, it will be recommended that leave to proceed in forma pauperis be denied.

As grounds for relief in habeas corpus, the petitioner alleges that his custody is unlawful , after a finding of not guilty by reason of temporary insanity in the Northern District of Texas, which is currently for appellate review by the 5th Circuit. He also asserts that the committing court has not been provided with a report from the Medical Center, and he attacks various aspects of his criminal proceedings. Finally, petitioner alleges that property has been lost or stolen from him. A Show Cause Order was entered and a response was filed by the United States.

In its response, the United States asserts that this Court is not the proper forum for a challenge to petitioner's criminal conviction. It is further asserted that his complaint of stolen

property is not cognizable in habeas corpus, and that petitioner has failed to exhaust administrative remedies.

Whatever the merits of petitioner's allegations, the proper forum in which to challenge the underlying criminal proceeding or collaterally attack the decision to assert an insanity defense is in the committing court and court of appeals superintending that court. With regard to his claims of lost property, habeas corpus is not the proper remedy. To the extent that a claim under the Federal Tort Claims Act is appropriate, petitioner must comply with the provisions of that act.

Counsel for the petitioner has filed a Motion to Withdraw. Petitioner has filed pro se pleadings, which reiterate the allegations of his original petition. Because there are no issues presented for which relief is appropriate, the motion is granted. ¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition herein for writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND, CHIEF
UNITED STATES MAGISTRATE JUDGE

Date: February 12, 2007

¹ Petitioner has 10 days to file exceptions to the Report and Recommendation of the United States Magistrate Judge.